

VAN HOY, REUTLINGER & TAYLOR

ATTORNEYS AT LAW
1001 EAST BOULEVARD
CHARLOTTE, NORTH CAROLINA 28203

CRAIG A. REUTLINGER
PAUL B. TAYLOR
PHILIP M. VAN HOY

(704) 377-6022
FAX (704) 377-6024

January 6, 1994

Office of the Secretary
Federal Communications Commission
Washington, DC 20554

RE: Proposed Rulemaking on Telephone Fraud
CC Docket 93-292

Greetings:

We are writing in response to the Notice of Proposed Rule Making and request for comments issued by the Federal Communications Commission on December 2, 1993 (CC Docket No. 93-292). Our law firm represents a nonprofit, tax exempt organization which has been the victim of toll fraud through a PBX system. The long distance carrier is presently making demand for about \$100,000 in long distance charges that occurred as a result of fraudulent access through a PBX exchange. Because of this demand, and the pending litigation, our client has asked us to make this comment without identifying the name of that client. If it is necessary for our comments to be considered that our client's name be divulged to the Commission, please let us know so that we can consider that option.

Background

Our client, which we will refer to as "Client X" is a nonprofit, tax exempt organization in North Carolina. After installing a PBX exchange with voice mail features, Client X asked the local telephone company, which installed the PBX exchange, to fix the software so that long distance calls could not be made to points outside of the country. Client X further informed the long distance carrier that calls to foreign countries were to be blocked. The local telephone company made several adjustments, but apparently did not change the factory pre-set "default codes" on the PBX system. At the time, Client X had no knowledge of the existence, significance, or danger of these "default codes."

In the summer of 1992, over the period of just one week, unknown persons accessed Client X's PBX exchange through these default codes, and charged over \$100,000 worth of long distance calls to foreign countries. During that same time period, Client X's typical legitimate long distance usage amounted to less than

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\$1,000. As soon as Client X discovered the fraudulent calls, it contacted the local telephone company which made further adjustments to the software, including the default codes, and stopped the unauthorized access. However, the long distance carrier has now demanded that Client X pay for the fraudulent calls. Ironically, Client X has subsequently learned that the long distance carrier has had available monitoring technology to prevent the type of fraud which occurred here, but they never informed Client X about it.

The Proposed Rules

The Proposed Rules recognize that it is unreasonable for the long distance carriers to create or benefit from a tariff scheme whereby innocent parties such as Client X are required to pay for fraudulent telephone calls where neither the carrier nor the installer of the PBX exchange warned Client X of the potential for telephone fraud. This is especially true where the telephone companies have been aware of previous fraudulent access through PBX systems with unchanged default codes, and where the carriers have the technology to monitor for and prevent such fraud. The proposed rules also conclude that long distance carriers have an affirmative duty to ensure that proper warnings regarding toll fraud are communicated effectively to customers.

The proposed rule set forth in Part 68, entitled "Connection of Terminal Equipment to the Telephone Network," provides that installers of PBX systems will be required to warn customers of the dangers involved in the use of such equipment, especially where the factory set default codes are not changed.

Comments

Client X agrees that it is unreasonable for the tariff scheme to create a system of strict liability on the customer, especially where the long distance carrier and PBX installer are in a position to warn the customer and to recommend measures in advance to reduce the possibility of fraud.

Client X further agrees that the long distance carriers should be under an affirmative duty to provide warnings to customers regarding the potential for toll fraud.

Where long distance carriers have the ability to detect and prevent toll fraud, they should be required to offer such services to customers.

If long distance carriers have no liability, then it is to their advantage to remain silent on the potential for telephone fraud, and thereafter to demand nearly pure profits from the customer for these fraudulent calls. Reading through the cases among the various federal courts, (which have clearly been

influenced by the mixed and unclear signals in recent FCC cases) this law firm has been shocked at the strict liability imposed on unwary customers while the carriers profit as silent partners to the criminals committing the fraud. Indeed, it appears that unless the Commission changes the ground rules, it will not be long before someone brings a class action law suit against the carriers and alleges violations under RICO for participating in a racketeering activity.

Client X is in favor of new rules that would eliminate any scheme of strict liability being imposed on the customer. Instead, the Commission should modify the present tariffs and issue clear rules that require carriers to warn customers of the potential for fraud and measures which can be taken to avoid such fraud.

Where there have been no such warnings, the carriers should clearly be estopped from making any demand for payment from the victimized customer.

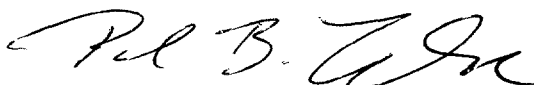
The liability scheme and the tariffs should clearly take into account the actual costs to the long distance carrier in transmitting the fraudulently-made long distance calls, and should not permit the carrier to earn a profit from such illegal activity.

Client X agrees that proper warnings should be included at the time of PBX system installations. Had they been warned at the outset, Client X would clearly have requested that the default codes be changed, and there would have been no fraudulent access through that device.

We thank you for permitting us to offer these comments. If you would like to receive further comments, or if you would like a representative for our client to testify before the Commission at any hearings on this subject, please let us know.

Sincerely,

VAN HOY, REUTLINGER & TAYLOR

A handwritten signature in cursive script, appearing to read "Paul B. Taylor".

Paul B. Taylor